

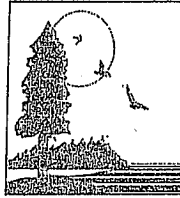
EXHIBIT B

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION

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May 2, 2008

Dr. Geraldine Knatz
Executive Director
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731

Dear Dr. Knatz,

This letter is in response to the recently approved Memorandum of Understanding (MOU) between the Board of Harbor Commissioners and various non-governmental organizations (NGOs) and local community groups, the TraPac Appellants. The MOU resulted from the TraPac Appellants' December 14, 2007 appeal to the Los Angeles City Council of the December 6, 2007 approval of the TraPac Final EIR by the Board of Harbor Commissioners. This appeal was based on a number of alleged inadequacies of the EIR. In exchange for withdrawing their appeal and allowing the TraPac terminal expansion project to proceed, the TraPac Appellants and the Port entered into an MOU.

The MOU provides for the creation of a Community Mitigation Fund which will be initially funded with \$12.04 million of Port tidelands trust funds. New levies tied to cargo volumes would then be added to the fund. It is anticipated that \$50 million of trust funds would be available for the non-CEQA required mitigation over the next five years. The agreement calls for the Community Mitigation Fund to be administered by a third-party, non-profit organization. In addition, the agreement also provides for the Port to fund a study to analyze off-port impacts. Once the non-profit entity has been established a second, more expansive study would be conducted. Finally, the agreement provides for the Port to place a deed restriction on the Wilmington buffer to ensure the property remains as public open space in perpetuity.

The state tide and submerged lands within the harbor area have been legislatively granted in trust to the City of Los Angeles and are managed by the Port pursuant to the city charter. The City and Board serve as trustees, both as to the lands themselves and as to the proceeds derived from the trust lands. *City of Long Beach v. Morse*, 31 Cal. 2d 254, 257 (1947). The trust is for the benefit of the entire State and

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not held in a municipal capacity. *Mallon v. City of Long Beach*, 44 Cal. 2d 199, 209 (1955). The legislative grant created a trust in which the City is the fiduciary/trustee, the State is the trustor, and the people of the State are the beneficiaries of the trust. The legal consequence of this trust relationship is that the proper use of the tidelands and tideland revenues is a statewide affair. *Mallon*, 209. Tideland revenues are subject to the same trusts as the tidelands themselves. And, the use of tidelands and its revenues for non-trust purposes is a violation of the Port's fiduciary duty to the trust and its beneficiaries.

The circumstances surrounding the emergency meeting held by the Board were quite unusual. Given the history of the China Shipping settlement agreement and the State's concerns in assuring Port expenditures of tidelands trust revenues would be legally justified, we had hoped that Port staff would have responded to our repeated offers to assist regarding the proposal to spend \$50 million of trust revenues for community projects. The history between the State and the City involving appropriate uses of tidelands trust revenues goes back well over thirty years. Previous disputes that arose after the Port approved funding of local community services resulted in a 1977 settlement agreement identifying certain acceptable and other non-acceptable expenditures. Likewise between 1994 and 2001 certain expenditures by the Port to the City of Los Angeles (the Nexus case) resulted in litigation and a settlement in which the City is to repay the Port tidelands trust fund some \$60 million

As the legislative trustee of these State public trust lands, the Port has the duty to be a good steward of these unique and scarce lands. Towards that end, the Port clearly has not only the right, but pursuant to the California Environmental Quality Act (CEQA) the obligation to mitigate impacts on the surrounding communities stemming from Port projects. We strongly support the Port's mitigating its impacts, including those in which a social justice impact nexus can be demonstrated. However, any mitigation must be consistent with the law, including public-trust law and the California Constitution. As such, we have some concerns with the MOU, specifically involving its implementation as it relates to the Wilmington buffer dedication, the funding of the Community Mitigation Fund and the creation of the third party non-profit organization to manage this fund.

The agreement requires the Port to place a deed restriction on the Wilmington buffer to ensure the property remains as public open space in perpetuity. It is not the use in particular that creates the concern, but rather the requirement that the dedication be in perpetuity. One trustee, i.e. the current Board of Harbor Commissioners, does not have the authority or the power to permanently dedicate trust lands to a specific use, even if it may be a trust consistent use. Such a permanent dedication does not allow for the flexibility necessary for future trustees to manage trust lands and trust needs for

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future generations. We would be happy to assist the Port in exploring legal alternatives that should assuage the fears or concerns that some of the local community might have regarding creation and maintenance of the buffer. One alternative, for example, may be to enter into a long-term lease, i.e. 66 years, of the buffer area with the City's Parks and Recreation Department or other appropriate entity for its use as open space.

The second concern is with the initial funding of approximately \$12 million by the Port to the community trust fund and the subsequent levies tied to cargo growth. We are interested in how the initial funding amount and the levy structures were determined. The MOU does not adequately describe the relationship between the funding amounts and the mitigation needs or nexus associated with port specific impacts. Because the approved EIR takes into consideration impacts and their appropriate mitigation, we would like to know how the additional impacts and their nexus were determined and their relationship to the proposed funding? While the MOU includes provisions for continued deposits by the Port into the fund, if needed, there are no mechanisms for the return of money to the Port if there is no identified impact, need to mitigate established, or identified needs have been met.

We believe that the two off-port impact studies required by the MOU are a significant positive step in the process of developing information and legal support necessary to establish such a nexus. We look forward to reviewing those studies and assisting the Board in determining whether a nexus has been established.

Our third concern relates to the provision of the MOU which provides for a third party non-profit entity to operate the Community Mitigation Fund. We are very interested in how this would operate, as we have serious concerns about the potential for the unlawful delegation of duties and powers by the Port to a non-profit entity, which would be a breach of fiduciary duty.

We understand that you and your staff may also have similar concerns and are working on how to implement the MOU while complying with your responsibilities and duties as a trustee of these Public Trust assets. The off-port impact studies are a great starting point and will be a key element in ensuring that any expenditure of Port trust funds for projects will be consistent with the Public Trust. We look forward to working with you and Port staff, in consultation with the Attorney General's Office, in assuring that the provisions of the MOU, and their implementation, are lawfully consistent with the Port's fiduciary responsibilities and the public trust doctrine.

We have also just been made aware in news reports that certain community groups rather than commenting on NOPs or Draft EIRs are seeking to interject

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themselves in the review process of administrative drafts of future EIRs. Should the Port decide to open up this process we trust that you will provide us with the same opportunity. I would be happy to meet with you at your earliest convenience to discuss these concerns.

Sincerely,

A handwritten signature in cursive script, reading "Paul D. Thayer". The signature is written in dark ink and is positioned above the printed name and title.

PAUL D. THAYER
Executive Officer